IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1602 of 1986

with

FIRST APPEAL No 1037 of 1987

For Approval and Signature:

HON'BLE MR.JUSTICE KSHITIJ R.VYAS
and
HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

FOOD CORPORATION OF INDIA

Appearance:

1. First Appeal No. 1602 of 1986
   MR HL JANI, AGP for appellant No. 1
   MR YF MEHTA for Respondent No. 1
   MS KJ BRAHMBHATT for Respondent No. 2
   MR SR BRAHMBHATT for Respondent No. 3
   ..... for Respondent No. 4
2. First Appeal No. 1037 of 1987
   MS KJ BRAHMBHATT for Appellant No. 1

MR YF MEHTA for Respondent No. 1
MR SR BRAHMBHATT for respondent No.2
MR HL JANI, AGP for respondent No.3 and 4

CORAM : HON'BLE MR.JUSTICE KSHITIJ R.VYAS
and
HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 12/03/2004

COMMON ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE K.S.JHAVERI)

The State of Gujarat has filed First Appeal No. 1602 of 1986 challenging the judgment and decree passed by the learned Civil Judge (SD), Kachchh at Bhuj, dated 10th March 1986 in Special Civil Suit No.38 of 1980 whereby the suit filed by the Food Corporation of India (in short, "FCI") was allowed and Gandhidham Municipality was restrained from collecting the property tax and education cess from FCI. First Appeal No. 1037 of 1987 is preferred by Gandhidham Municipality challenging the same judgment and decree.

2. Both the appeals were admitted on 29th June 1987. For the sake of convenience, the parties may be referred as FCI as plaintiff; Gandhidham Municipality as defendant No.1, and the State Government as defendant No.3.

3. The original plaintiff preferred Special Civil Suit No.38 of 1980 challenging the assessment of the properties of different plots occupied by FCI on the ground that FCI being a statutory Body and is under direct and complete control of Government and is Government undertaking.

4. Defendant No.1 filed its written statement at Exh.21 and contended that the plaintiff is not exempted from paying tax and charges and denied that the Municipality has no power to collect the education cess. Defendants Nos.3 and 4 have also filed the common written statement vide Exh.37 and contended that the plaintiff is not exempted from paying education cess and charges due to the Defendant No.1 and they have also supported the case of defendant No.1, namely, the Gandhidham Municipality. The trial Court framed the issued vide Exh.39 and allowed the suit filed by the plaintiff and restrained the defendant Municipality and the State Government from collecting the property tax and the education cess.

5. When the matter was called out, the Asstt. Govt. Pleader has pointed out that the issue raised in the First Appeals is squarely covered by a judgment in the case of Food Corporation of India v. Municipal Committee Jalalabad reported in AIR 1999 SC 2573 wherein in para 7, the Honourable Supreme Court has observed as under:

> "The question that arises before us is, if the property of the Corporation is property of the Union of India and, thus, exempt from taxation, imposed by the State or any authority within a State Authority in the present case would include local authority. A Constitution Bench of this Court in Electronics Corporation of India Ltd. vs. Secretary, Revenue Department, Govt. of Andhra Pradesh (1999) 4 SCC 458 = (1999) 3 Scale 123 = (AIR 1999 SC 1734 : 1999 AIR SCW 1367) has held that a Government company is distinct from the Central Government and can not claim exemption from taxation under Article 285 of the Constitution. The case of the Corporation can not be any different. The Act under which is constituted specifically makes the Corporation a body corporate having the attributes of a company"

Further in para 11 of its judgment, the Honourable Supreme Court has observed as under:

> "Even if the Corporation is an agency or instrumentality of the Central Government, that did not lead to the inference that the Corporation is a Government department. The reason is that Act has given the Corporation an individuality apart from that of the Government."

6. In the above view of the matter, the law in question is well settled by the Honourable Supreme Court and, therefore, the contention raised by the plaintiff that the Municipality cannot levy or collect tax with regard to the property of the Corporation, has no force and is required to be rejected.

7.1 Apart from that, between the same parties, this Court in Letters Patent Appeal No. 465 of 1994, vide judgment and order dated 19th January 2002 has dismissed the appeal filed by the plaintiff FCI and has rejected the contention raised by the plaintiff.

7.2 In the said Letters Patent Appeal, the present

respondent No.1 plaintiff FCI has raised three contentions; viz. FCI being an instrumentality of the State, is not liable to pay municipality tax in view of Article 285 of the Constitution. In substance, it is the contention of the plaintiff that the land was originally owned by Govt. of India and the said land is given to the defendant No.1 plaintiff Corporation for the purpose of construction of godowns and the appellant Corporation is a statutory Corporation, no doubt, is owned by Govt. of India and therefore, in view of Section 99 of the Gujarat Municipalities Act read with Article 285 of the Constitution, no tax can be levied upon the property constructed by the appellant - Corporation. The other contention which was raised by the plaintiff before the Division Bench was that, since in respect of some part of the property they are holding, the land allotted by Kandla Port Trust, and the tenure of the land is on leave and licence basis, and each tenure of the licence has not exceeded 11 months and, therefore, in view of Section 113 of the Gujarat Municipalities Act, more particularly, in view of sub-secion (2) of the said section, the primary liability to pay tax is upon the owner of the land, i.e. Kandla Port Trust and not the occupier of the land. The third contention which was raised by the FCI was that the matter should be referred to a high Power Committee as observed by the Honourable Supreme Court in the case of Oil & Natural Gas Commission v. Collector of Central Excise, reported in 1995 Supp. (4) SCC 541.

8. As stated hereinabove, the Division Bench, after relying upon the observation of the Honourable Supreme Court in the case of Food Corporation of India v. Municipal Committee, Jalalabad (supra) has rejected the contention of the FCI. In that view of the matter, the First Appeal filed by the State of Gujarat and Gandhidham Municipality are required to be allowed and the judgment and decree passed by the trial Court in Special Civil Suit No. 38 of 1980 are required to be set aside.

9. In the result, the First Appeals are allowed and the judgment and decree dated 10.3.1986 passed by the Civil Judge (SD), Kachchh, at Bhuj in Special Civil Suit No.38 of 1980 are set aside. There shall be no order as to costs.

(Kshitij R. Vyas, J.)

(K.S. Jhaveri, J.)
Sreeram.